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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 BENNION & DEVILLE FINE
HOMES, INC., a California
16 corporation, BENNION & DEVILLE
FINE HOMES SOCAL, INC., a
17 California corporation, WINDERMERE
SERVICES SOUTHERN
18 CALIFORNIA, INC., a California
corporation,

19 Plaintiffs,

20 v.

21 WINDERMERE REAL ESTATE
22 SERVICES COMPANY, a Washington
corporation; and DOES 1-10

23 Defendant.
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25
26 **AND RELATED COUNTERCLAIMS**
27
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Case No. 5:15-CV-01921-DFM

Hon. Douglas F. McCormick

**DEFENDANT AND
COUNTERCLAIMANT'S NOTICE
OF MOTION AND MOTION *IN
LIMINE* TO EXCLUDE OPINION
OF PLAINTIFFS' EXPERT PETER
WROBEL RE: NET VALUE**

[FRE 104, 402, 403, 702, 703]

Date: June 18, 2018

Time: 10:00 a.m.

Courtroom: 6B

Complaint Filed: September 17, 2015

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on March 1, 2018, at 10:00 a.m., or as soon
3 thereafter as the matter may be heard before the Honorable Douglas F. McCormick
4 of United States District Court, Ronald Reagan Federal Building and United States
5 Courthouse located at 411 W. Fourth St., Santa Ana, CA 92701, Courtroom 6B,
6 Defendant and Counterclaimant Windermere Real Estate Services Company
7 (“WSC”) will move the Court for an *in limine* order excluding any evidence,
8 testimony, or arguments from, or relating to, Plaintiffs’ expert Peter Wrobel’s
9 opinion regarding the “Net Value of WSSC as of January 2015.” This motion is
10 made pursuant to Rules 104, 402, 403, 702, and 703 of the Federal Rules of
11 Evidence and the standards set forth by the Supreme Court in *Daubert v. Merrill*
12 *Dow Pharm., Inc.* Wrobel’s analysis is contrary to the express terms of the parties’
13 agreement, and is therefore irrelevant and admission of such would unfairly
14 prejudicial, confuse the issues, and misleading the jury.

15 WSC also seeks an order excluding any evidence, testimony, or arguments
16 that Plaintiffs’ expert Peter Wrobel’s opinion regarding the Net Value of WSSC as
17 of January 2015 is anything other than alleged damages under the Termination
18 Obligation of the Area Representation Agreement. Such evidence, testimony, or
19 arguments are barred by Federal Rules of Civil Procedure 37 and the doctrine of
20 judicial estoppel.

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1 This motion is based on this notice, the memorandum of points and
2 authorities and declaration of Jeffrey A. Feasby filed concurrently herewith, the
3 matters of which this Court may be requested to take judicial notice, and upon such
4 other matters, whether written or oral, as may be presented to the Court at or prior to
5 the hearing on this motion.

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DATED: April 25, 2018 PEREZ VAUGHN & FEASBY INC.

By: /s/ Jeffrey A. Feasby
John D. Vaughn
Jeffrey A. Feasby
Attorneys for
Windermere Real Estate Services Company